

APPENDIX 1
AGREEMENT

<p style="text-align: center;">New York State Department of Agriculture and Markets 10B Airline Drive Albany, NY 12235-0001 Agency Code 06000</p> <p>Contract Authority: Agriculture and Markets Law, Article 16, §§ 192-a & 192-c; Chapter ____ of the Laws of 20__</p>	<p>Contract Number: _____</p> <p>Amount of Agreement: \$ _____</p> <p>Contract Period: _____ to _____</p> <p>NYS Vendor I.D. _____</p> <p>Charities Reg. No.: _____</p> <p>Contractor has timely filed all required reports with the AG's Charities Bureau.</p>
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Contractor Name/Project Sponsor: _____

Street: _____ City: _____ State: _____ Zip: _____

Billing Address (if different from above): _____

Street: _____ City: _____ State: _____ Zip: _____

Title/Description of Project: **Laboratory Testing of Petroleum Products**

THIS AGREEMENT INCLUDES THE FOLLOWING:	FOR AMENDMENTS CHECK THOSE THAT APPLY:		
<p><input checked="" type="checkbox"/> This Coversheet</p> <p><input checked="" type="checkbox"/> Appendix A (Standard Clauses for all New York State Contracts-Jan. 2014)</p> <p><input checked="" type="checkbox"/> Appendix B (Project Budget)</p> <p><input checked="" type="checkbox"/> Appendix C (Scope of Work or RFP and Proposal)</p> <p><input checked="" type="checkbox"/> Appendix D (The Department's General Conditions)</p> <p><input checked="" type="checkbox"/> Appendix E (The Department's Special Conditions)</p> <p><input checked="" type="checkbox"/> Appendix E-1 (MWBE Requirements & Practices)</p>	<table style="width: 100%; border-collapse: collapse;"><tr><td style="width: 80%; border: 1px solid black; padding: 5px;"><p><input type="checkbox"/> Extension of Time From _____ to _____</p><p><input type="checkbox"/> Increase Amount</p><p><input type="checkbox"/> Decrease Amount</p><p><input type="checkbox"/> Revised Budget</p><p><input type="checkbox"/> Revised Scope of Work</p><p><input type="checkbox"/> Other _____</p><p><input type="checkbox"/> Appendix A (Standard Clauses for New York State Contracts-_____)</p></td><td style="width: 20%; border: 1px solid black; padding: 5px; vertical-align: top;"><p>If Increase/Decrease in Amount: _____</p><p>Previous Amount: \$ _____</p><p>Increase/decrease _____</p><p>New Total: \$ _____</p></td></tr></table> <p style="text-align: center; border-top: 1px solid black; margin-top: 5px;">ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.</p>	<p><input type="checkbox"/> Extension of Time From _____ to _____</p> <p><input type="checkbox"/> Increase Amount</p> <p><input type="checkbox"/> Decrease Amount</p> <p><input type="checkbox"/> Revised Budget</p> <p><input type="checkbox"/> Revised Scope of Work</p> <p><input type="checkbox"/> Other _____</p> <p><input type="checkbox"/> Appendix A (Standard Clauses for New York State Contracts-_____)</p>	<p>If Increase/Decrease in Amount: _____</p> <p>Previous Amount: \$ _____</p> <p>Increase/decrease _____</p> <p>New Total: \$ _____</p>
<p><input type="checkbox"/> Extension of Time From _____ to _____</p> <p><input type="checkbox"/> Increase Amount</p> <p><input type="checkbox"/> Decrease Amount</p> <p><input type="checkbox"/> Revised Budget</p> <p><input type="checkbox"/> Revised Scope of Work</p> <p><input type="checkbox"/> Other _____</p> <p><input type="checkbox"/> Appendix A (Standard Clauses for New York State Contracts-_____)</p>	<p>If Increase/Decrease in Amount: _____</p> <p>Previous Amount: \$ _____</p> <p>Increase/decrease _____</p> <p>New Total: \$ _____</p>		

The Contractor and the Department agree to be bound by the terms and conditions contained in this Agreement.

CONTRACTOR	NYS DEPARTMENT OF AGRICULTURE & MARKETS
<p>Signature of Contractor's Authorized Representative: _____</p> <p>Date: _____</p> <p>Typed or Printed Name of Above Representative: _____</p> <p>Title of Authorized Representative: _____</p> <p>STATE OF NEW YORK</p> <p>ss: _____</p> <p>County of _____</p> <p>Notary Public: On this ____ day of _____, 20__ before me personally appeared _____ to me known, and known to me be the same person who executed the above instrument and duly acknowledged the execution of the same.</p> <p>Attorney General: _____</p>	<p>Signature of Authorized Official: _____</p> <p>Date: _____</p> <p>Typed or Printed Name of Above Official: _____</p> <p>Title of Authorized Official: _____</p> <p>State Agency Certification: In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.</p> <p>Approved: Thomas P. DiNapoli, State Comptroller</p> <p>By: _____</p> <p>Date: _____</p>

APPENDIX D

GENERAL CONDITIONS FOR AGREEMENTS NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

These general conditions apply to the administrative aspects of the agreement and reflect New York State's contract record keeping and payment procedures. These general conditions cannot be changed.

ORDER OF PRECEDENCE

The Order of Precedence for this **Agreement** is as follows:

Appendix A
Contract Cover Page
Appendix D
Appendix E
Appendix E-1
Appendix C
Appendix B

PAYMENT

In consideration of the services to be performed by the **Contractor** pursuant to this Agreement, the **Department** agrees to pay and the **Contractor** agrees to accept a sum not to exceed the period amount specified on the cover sheet of this agreement. All payments shall be in accordance with the budget contained in Appendix B for the applicable period. Payment under this Agreement is conditional upon the continued availability of funds.

If the amount of this Agreement exceeds \$50,000, payments cannot be made until the Agreement is approved by the Office of the State Comptroller (OSC). Expenditures cannot proceed the start date of the Agreement. If the **Contractor** makes expenditures subsequent to the Agreement start date, but prior to OSC approval, it does so at its own risk. In the event OSC does not approve the Agreement, the **Department** shall have no obligation to pay the **Contractor** for any such expenditure.

Any goods or services ordered by the **Contractor** prior to the start date of the Agreement must be received and paid for during the Agreement period in order for the cost of such goods and/or services to be reimbursed using funds from this Agreement. The **Department** will not reimburse the **Contractor** for the cost of goods and/or services received or paid for prior to the start date of the Agreement period. If OSC approval of the Agreement is required, and the **Contractor** orders any goods and/or services prior to OSC's approval of the Agreement, it does so at its own risk.

The **Contractor** shall submit all Claims for Payments and reports to the following address: BSC Accounts Payable Unit, P.O. Box 2117, Albany, New York 12220-0117, or via e-mail at accountspayable@ogs.ny.gov. Claims and any reports will not be considered received by the **Department** and any interest which may be due the **Contractor** will not begin to accrue until they have been received by the Division of Fiscal Management.

The **Contractor** shall submit all Claims for Payment under this Agreement, together with supporting fiscal documentation and required reports within fifteen (15) business days after the end of each quarter. All obligations must be incurred prior to the end date of this Agreement. The final Claim shall be submitted within thirty (30) business days of the end of each annual contract period or the termination of this Agreement.

For purposes of interest determinations pursuant to Article XI-B of the State Finance Law, payments shall be due 45 days after the end of each quarter or 30 days after submission of a Claim for Payment deemed acceptable by the **Department** and OSC, whichever is later.

Final payment, including payment of retained amounts if any, shall not be made until work under the Agreement is completed to the satisfaction of the **Department** and the **Contractor's** final performance report and a final budget report detailing receipt and expenditure of all funds received pursuant to this Agreement by major budget category are received and accepted by the **Department**. Satisfactory completion and acceptance shall be defined as conformance to established standards for such reports and conformance to the attached plan of work.

Upon examination of the **Contractor's** payment requests and supporting material, the **Department** may, in its sole discretion, modify or adjust the amount requested to reflect contract funds expended as of the date of the request. Subsequent to its review and approval of the payment request, the **Department** will transmit the request to the Comptroller for payment.

Payment for claims submitted by the **Contractor** shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The **Contractor** shall comply with the Comptroller of the State of New York's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. The **Contractor** acknowledges that it will not receive payment on any claims submitted under this Agreement if it does not comply with the Comptroller of the State of New York's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

PROGRESS REPORTS

The laboratory must provide weekly reports of samples processed and received in the previous week by close of business on Wednesday. The laboratory must notify the Department within 2 hours of any ELISA positive or elevated results. Positive samples must be packaged with appropriate cold pack and forwarded via overnight package service at the laboratory's expense to a confirmatory laboratory at USDA-APHIS-PPQ Center for Plant Health Science and Technology (CPHST) in Beltsville, Maryland.

PAYMENT CONTINGENCY

Funds for payment under this Agreement are provided to the **Department** through appropriations from the New York State Legislature. These appropriations are made on a fiscal year basis. New York State's fiscal year begins on April 1 of each calendar year and ends on March 31 of the following calendar year. Funds for payments under this Agreement were appropriated to the **Department** during fiscal year **2021-2022**. Payments made after fiscal year **2021-2022** or payment for work pursuant to this Agreement which is completed or continued by the **Contractor** after fiscal year **2021-2022** is subject to appropriation of funds by the Legislature in each subsequent fiscal year.

FINANCIAL LIMIT

The financial limit of State appropriated funds under this Agreement shall not exceed the amount indicated on the latest executed version of the signature page of this Agreement and the **Department** shall not be obligated to make any payment to the **Contractor** in excess of that amount.

COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

The **Contractor** is responsible for complying with all local, state and federal laws applicable to work performed under this Agreement.

CONTRACT EXPENDITURES

Expenditures under this Agreement shall conform to the budget annexed as Appendix B. Any Budget variance shall be made only upon the prior written approval of the **Department** and the Comptroller of the State of New York. The **Contractor** cannot increase the total amount of the Agreement.

NON-DUPLICATION OF PAYMENTS

The payments received by the **Contractor** under this Agreement shall not duplicate payments received from any other source for the work performed under this Agreement. In the event of such duplication, the **Contractor** shall remit to the **Department** the amount which duplicates payment received from other sources.

RECORDS MAINTENANCE, EXAMINATION AND RETENTION

The **Contractor** shall maintain records and accounts in specific detail to identify all contract funds received and expended under this Agreement. The **Contractor** shall maintain a daily written record which contains the name(s) of the officer(s) and employee(s) providing services under this Agreement and the amount of time expended upon such services.

The **Contractor** shall maintain the records required under this paragraph as set forth in Appendix A to this Agreement.

INDEMNIFICATION

The **Contractor** agrees to indemnify and hold harmless the State of New York and the **Department** from all liability incurred by the **Department** for bodily injury (including death) and real and personal property damage resulting from the negligent acts, errors or omissions of the **Contractor**, its officers, agents or employees in the provision of services under this Agreement, provided that the **Department** timely notifies the **Contractor** of any such claim and afford the **Contractor** an opportunity to defend such claim and cooperate fully with the **Contractor** in the defense of any claims.

NON-SECTARIAN PURPOSE

The **Contractor** shall not expend funds received under this Agreement for any purposes other than for performance of the work under this Agreement, and hereby represents that no contract funds shall be expended directly or indirectly for any private or sectarian purpose.

CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT

Neither the **Contractor**, nor its agents, employees, suppliers or subcontractors shall be in any way deemed to be employees or agents of the **Department** or of the State of New York in performing the work under this Agreement.

DEVIATION FROM WORK

The **Contractor** shall perform the work under this Agreement as outlined in the scope of work annexed as Appendix C. Any substantial deviation from the plan of work shall require the prior written approval of the **Department**.

RESPONSIBILITY REQUIREMENTS

- A. The **Department** is required to undertake an affirmative review of the responsibility of any vendor to which it proposes to make a contract award. Such review shall be designed to provide reasonable assurances that the proposed contractor is

responsible. In undertaking such review, the **Department** must comply with the following standards:

- a. In all cases, the **Department** must consider any information that has come to its attention from the proposed contractor or any other source that would raise issues concerning the proposed contractor's responsibility.
 - b. In the case of any contract valued at \$100,000 or more, the **Department** must affirmatively require disclosure by the proposed contractor of all information that the **Department** reasonably deems relevant to a determination of responsibility by completing a Vendor Responsibility Questionnaire.
- B. The **Contractor** shall at all times during the **Agreement** term remain responsible. The **Contractor** agrees, if requested by Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- C. The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this **Agreement**, at any time, when he or she discovers information that calls into question the responsibility of the **Contractor**. In the event of such suspension, the **Contractor** will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the **Contractor** must comply with the terms of the suspension order. **Agreement** activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the **Agreement**.
- D. Upon written notice to the **Contractor**, and a reasonable opportunity to be heard with appropriate Commissioner officials or staff, the **Agreement** may be terminated by Commissioner or his or her designee at the **Contractor's** expense where the **Contractor** is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

TERMINATION

The **Department** may terminate this Agreement for convenience upon giving thirty (30) days written notice to the other party. Upon receipt of such notice from the **Department**, the shall immediately cease work and prepare a statement of costs, expenses and non-cancelable commitments incurred as of the date of such termination.

The **Department** may terminate this Agreement for cause upon giving one (1) days written notice.

The **Contractor's** failure to perform in accordance with the terms of this Agreement due to circumstances reasonably beyond the **Contractor's** control should not

constitute cause for termination pursuant to this provision. In the event of such failure to perform, the **Department** may, at its option, either grant the **Contractor** a specified period in which to correct its performance, or terminate this Agreement in accordance with this paragraph.

MODIFICATION

This Agreement may not be modified unless such modification is made in writing, executed by the **Department** and the **Contractor** and approved by the Attorney General and Comptroller of the State of New York.

FINAL REPORT

Not later than sixty (60) days from completion of the work under this Contract, the **Contractor** shall file with the **Department** a final written report summarizing the **Contractor's** laboratory findings of the work under this Agreement.

NECESSARY SIGNATURES

If the financial limit under this Agreement exceeds Fifty Thousand Dollars (\$50,000) this Agreement shall not be binding and effective upon the **Department** unless and until approved by the Attorney General and the Comptroller of the State of New York.

APPENDIX E

SPECIAL CONDITIONS FOR AGREEMENTS

NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

These special conditions apply to the administrative aspects of this particular agreement. These special conditions cannot be changed.

TERMINATION PURSUANT TO NEW YORK STATE FINANCE LAW SECTION 139-K

The **Department** reserves the right to terminate this Agreement in the event it is found that the certification filed by the **Contractor** in accordance with the New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the **Department** may exercise its termination right by providing written notification to the **Contractor**.

INSURANCE

The **Contractor** shall obtain and keep in force during the term of this Agreement insurance policies, naming the State of New York and the **Department** as additional insured as follows:

TYPE	AMOUNT
COMMERCIAL GENERAL LIABILITY INSURANCE	\$1,000,000
COMMERCIAL BUSINESS AUTOMOBILE LIABILITY INSURANCE	\$1,000,000

Certificates of insurance showing the above coverages shall be provided to the **Department** within ten (10) business days from the date the **Contractor** executes the Agreement. The certificates shall provide that the policies shall not be amended or cancelled upon less than ten (10) days written notice to the **Department** from the policy issuers.

DIESEL EMISSIONS REDUCTION ACT 2006

In 2007 New York State passed legislation establishing the Diesel Emissions Reduction Act 2006 (DERA). This Act amended the Environmental Conservation Law (ECL) by adding Section 19-0323 which requires the use of best available retrofit technology (BART) and ultra low sulfur diesel fuel (ULSD) for heavy duty vehicles owned or operated by, including on behalf of, state agencies and state or regional public authorities. The **Department** has promulgated regulations (6NYCRR Part 248) to provide

guidance on provisions of the law. The regulations may be found on the **Department's** website at: <http://www.dec.ny.gov/regs/2492.html> .

The **Contractor** will be required to certify that they are in compliance with the provisions of ECL Section 19-0323 by providing the necessary reporting information and attesting to the following:

The Contractor certifies and warrants that all heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) Section 19-0323, to be used under this Contract, will comply with the specifications and provisions of ECL Section 19-0323 and the regulations promulgated thereto, which requires the use of Best Available Retrofit Technology (BART) and Ultra Low Sulfur Diesel (ULSD), unless specifically waived by the Department. Qualifications for a waiver under this law will be the responsibility of the Contractor.

IRAN DIVESTMENT ACT REQUIREMENTS

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012.

By entering into this **Agreement**, the **Contractor** certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on the **Agreement** any subcontractor that is identified on the Prohibited Entities List. The **Contractor** agrees that should it seek to renew or extend this **Agreement**, it must provide the same certification at the time the **Agreement** is renewed or extended. The **Contractor** also agrees that any proposed assignee of the **Agreement** will be required to certify that it is not on the Prohibited Entities List before the **Department** may approve a request for assignment of **Agreement**.

During the term of the **Agreement**, should the **Department** receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the **Department** will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the **Department** shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the **Contractor** in default.

The **Department** reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the **Agreement**, and to pursue a responsibility review with the **Contractor** should it appear on the Prohibited Entities List hereafter.

SUBCONTRACTS

Subcontracting of any portion of the services required under this Agreement shall not be permitted without the expressed prior written approval of the **Department**. Any request to use subcontractors must include a complete description of the proposed subcontractor, its key personnel, its location, the services it will provide, and its qualifications to provide such services. Any subcontractor providing laboratory services must meet all the qualifications listed in the IFB, attached as Appendix C of this Agreement, and must provide documentation of its quality management system and its internal and external control programs to demonstrate ability to perform the services required.

RENEWAL

This Agreement may be renewed by the **Department** in its sole discretion for successive terms not to exceed four (4) years, subject to the approval of the Attorney General and comptroller of the State of New York.

CONSULTANT SERVICES CONTRACTOR'S ANNUAL EMPLOYMENT REPORT

Contractor shall submit the attached Form B: "State Consultant Services Contractor's Annual Employment Report" to the Department, the Office of the State Comptroller and the Department of Civil Service on or before May 15th of each year of this Agreement. Such report shall include employment data for the most recently concluded State fiscal year (April 1- March 31).

Instructions for Completing Form B

- **Scope of contract:** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, which is available through the United States Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)
- **Number of Employees:** the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.
- **Number of hours worked:** the total number of hours worked during the Report Period by the employees in the employment category.
- **Amount payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract for work by the employees in the employment category, for services provided during the Report Period.

Reports that are submitted to the Department must be transmitted as follows:

By mail: NYS Department of Agriculture & Markets
Division Fiscal Management
10B Airline Drive
Albany, NY 12235

By fax: (518) 485-7750

Reports that are submitted to the Office of the State Comptroller must be transmitted as follows:

By mail: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street. 11th Floor
Albany, NY 12236
Attn: Consulting Reporting

By fax: (518) 474-8030 or (518) 473-8808

Reports that are to be submitted to the Department of Civil Service must be transmitted as follows:

By mail: NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

FORM B**OSC Use Only:**

Reporting Code:

Category Code:

State Consultant Services
Contractor's Annual Employment Report
Report Period: April 1, to March 31,

Contracting State Agency Name:

Agency Code:

Contract Number:

Contract Term: / / to / /

Contractor Name:

Contractor Address:

Description of Services Being Provided:

Scope of Contract (Choose one that best fits):

Analysis ☐ Evaluation ☐ Research ☐ Training ☐

Data Processing ☐ Computer Programming ☐ Other IT consulting ☐

Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐

Health Services ☐ Mental Health Services ☐

Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☐

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Preparer's Signature: _____

Title:

Phone #:

Date Prepared: / /

Please submit one copy of this form to the following:

NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consulting Reporting

Fax: (518) 474-8030 or (518) 473-8808

NYS Dept. of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

NYS Dept. of Agriculture & Markets
Division of Fiscal Management
10B Airline Drive
Albany, NY 12235

Fax: (518) 485-7750

SAMPLE

APPENDIX E-1

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The **Department of Agriculture and Markets** (“**Department**”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The **Contractor** to the subject Agreement (the “**Contractor**” and the “**Agreement**”, respectively) agrees, in addition to any other nondiscrimination provision of the Agreement and at no additional cost to the **Department**, to fully comply and cooperate with the **Department** in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The **Contractor’s** demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Agreement, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies available to the **Department** pursuant to the Agreement and applicable law.

II. Contract Goals

- A. For purposes of this Agreement, the **Department** hereby establishes an overall goal of thirty percent (30%) for MWBE participation, fifteen percent (15%) for New York State-certified minority-owned business enterprise (“MBE”) participation and fifteen percent (15%) for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Agreement and achieving the MWBE Contract Goals established in Section II-A hereof, the **Contractor** should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>. Additionally, the **Contractor** is

encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Agreement.

- C. The **Contractor** understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of an Agreement with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be twenty-five percent (25%) of the total value of the Agreement.
- D. The **Contractor** must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Agreement. Such documentation shall include, but not necessarily be limited to:
 - 1. Evidence of outreach to MWBEs;
 - 2. Any responses by MWBEs to the **Contractor's** outreach;
 - 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the **Department** with MWBEs; and
 - 5. Information describing specific steps undertaken by the **Contractor** to reasonably structure the Agreement's scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity ("EEO")

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Agreement.
- B. In performing the Agreement, the **Contractor** shall:
 - 1. Ensure that each **Contractor** and subcontractor performing work on the Agreement shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The **Contractor** shall submit an EEO policy statement to the **Department** within seventy-two (72) hours after the date of the notice by the **Department** to award the Agreement to the **Contractor**.
 - 3. If the **Contractor**, or any of its subcontractors, does not have an existing EEO policy statement, the **Department** may require the **Contractor** or subcontractor to adopt a model statement (see Form MWBE EE01 – MWBE and Equal Employment Opportunity Policy Statement).

4. The **Contractor's** EEO policy statement shall include the following language:
 - a. The **Contractor** will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The **Contractor** shall state in all solicitations or advertisements for employees that, in the performance of the Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The **Contractor** shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the **Contractor's** obligations herein.
 - d. The **Contractor** will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Agreement.

C. Form MWBE/EEO2 – Staffing Plan

To ensure compliance with this Section, the **Contractor** shall submit a Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Agreement by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The **Contractor** shall complete the Staffing Plan Form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the Agreement.

D. Form MWBE/EEO3 - Workforce Employment Utilization Report

1. The **Contractor** shall submit a Workforce Employment Utilization Report, and shall require each of its subcontractors to submit a Workforce Employment Utilization Report, in such form as shall be required by the **Department** on a **quarterly** basis during the term of the Agreement.
2. Separate forms shall be completed by the **Contractor** and any subcontractors.

E. The **Contractor** shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The **Contractor** and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex,

national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The **Contractor** represents and warrants that the **Contractor** has submitted an MWBE Employment Utilization Plan, or shall submit an MWBE Employment Utilization Plan at such time as shall be required by the **Department**, through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the **Contractor** may arrange to provide such evidence via a non-electronic method to the **Department**, either prior to, or at the time of, the execution of the Agreement.
- B. The **Contractor** agrees to adhere to such MWBE Employment Utilization Plan in the performance of the Agreement.
- C. The **Contractor** further agrees that failure to submit and/or adhere to such MWBE Employment Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, the **Department** shall be entitled to any remedy provided herein, including but not limited to, a finding that the **Contractor** is non-responsive.

V. Waivers

- A. If the **Contractor**, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the **Contractor** may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the **Department**. Such waiver request must be supported by evidence of the **Contractor's** good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the **Department** shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If the **Department**, upon review of the MWBE Employment Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the **Contractor** is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, the **Department** may issue a notice of deficiency to the **Contractor**. The **Contractor** must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The **Contractor** is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the **Contractor** may arrange to provide such report via a non-electronic method to the **Department** by the 10th day following the end of each quarter during the term of the Agreement.

VII. Liquidated Damages - MWBE Participation

- A. Where the **Department** determines that the **Contractor** is not in compliance with the requirements of this Appendix and the **Contractor** refuses to comply with such requirements, or if the **Contractor** is found to have willfully and intentionally failed to comply with the MWBE participation goals, the **Contractor** shall be obligated to pay to the **Department** liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the **Contractor** achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Agreement.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the **Department**, the **Contractor** shall pay such liquidated damages to the **Department** within sixty (60) days after they are assessed. Provided, however, that if the **Contractor** has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the **Contractor** following the complaint process.